Final Rules of Practice and Procedure, 59 FR 39020, 39043 (August 1, 1994).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 22, 1995, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain variable speed wind turbines and components thereof, by reason of alleged infringement of claim 131 of U.S. Letters Patent 5,083,039 or claim 51 of U.S. Letters Patent 5,225,712, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Kenetech Windpower, Inc., 6952 Preston Avenue, Livermore, California 94550.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Enercon GmbH, Dreekamp 5, D–26605, Aurich, Germany

The New World Power Corporation, 558 Lime Rock Road, Lime Rock, Connecticut 06039.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39022, August 1, 1994. Pursuant to 19 CFR 201.16(d) and § 210.13(a) of the Commission's Final Rules, 59 FR 39022, August 1, 1994, such responses will be considered by the Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 23, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13150 Filed 5–26–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32695]

CSX Transportation, Inc.—Trackage Rights Exemption—Vaughan Railroad Company

Vaughan Railroad Company (Vaughan) has agreed to grant nonexclusive trackage rights to CSX Transportation, Inc. (CSXT) over approximately 14.63 miles of its rail line between Rich Creek Junction and Vaughan, WV. The trackage rights begin at Rich Creek Junction, V.S. 364+32, extend to the station of Vaughan, V.S. 643+00=0+00, and continue to the end of Vaughan's ownership at V.S. 482+00. The trackage rights were scheduled to become effective on or after May 17, 1995.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 23, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13159 Filed 5–26–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until May 10, 1995, consummation should take place on or after May 17, 1995, rather than May 15, 1995, as indicated in the verified notice of exemption. Applicant's representative has confirmed that the correct consummation date is on or after May 17, 1995.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Topa Equities (V.I.), Ltd.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Topa Equities (V.I.), Ltd*, Civil Action No. 1994–179, United States District Court for the District of the Virgin Islands St. Thomas/St. John Division, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW, Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of the Virgin Islands, United States Courthouse, Federal Building and U.S. Courthouse, 5500 Veterans Drive, St. Thomas, United States Virgin Islands 00802.

Rebecca P. Dick,

Acting Deputy Director of Operations, Antitrust Division.

United States' Response to Public Comments

[Civil No: 1994–179]

Introduction

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(d), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on December 7, 1994, when the United States filed a Complaint alleging that Topa Equities (V.I.), Ltd. (hereinafter ''Topa'') had violated section 3 of the Sherman Act (15 U.S.C. 3). The Complaint alleges that through a series of exclusive distribution agreements with all major suppliers of distilled spirits, Topa holds a monopoly on the wholesale distribution in the Virgin Islands of almost every major brand of distilled spirits. The Complaint further alleges that these exclusive distribution rights, taken together, are contracts in restraint of trade within the meaning of the Sherman Act.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement (''CIS''), and a Stipulation signed by Topa for entry of the proposal Final Judgment. The proposed Final Judgment resolves the antitrust violation alleged in the Complaint by enjoining Topa from taking any action to prevent its suppliers of distilled spirits from canceling their distribution arrangements with Topa and appointing new wholesalers instead. The proposed Final Judgment also imposes a number of restrictions on Topa's business practices in order to prevent Topa from unreasonably interfering with the operations of a competitor.

A summary of the terms of the proposed Final Judgment and CIS and directions for the submission of written comments relating to the proposal were published in *The Washington Post* for seven consecutive days beginning December 25, 1994, and in *The Virgin Islands Daily News* on December 21–24 and December 27–29, 1994. The proposed Final Judgment and CIS were published in the **Federal Register** on December 30, 1994. 59 FR 67728 (1994).

The 60-day period for public comments commenced on December 30, 1994, and expired on March 2, 1995. The United States received two comments on the proposed Final Judgment, from St. Thomas Food Products Corp. (''St. Thomas Foods'') and IPV, Inc. trading as A.H. Riise Liquor Stores (''A.H. Riise''). Those comments are being filed with the Court along with this response. Upon careful consideration of these comments, as fully explained below, the United States urges that the proposed Final Judgment be entered as originally submitted to the Court.

I. Legal Standards Governing the Court's Public Interest Determination

The procedural requirements of the APPA are intended to eliminate secrecy from the consent decree process, to ensure that the Justice Department has access to public comments bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. *Hearings on H.R. 9203, H.R. 9947, and S. 782, Consent Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee*, 93rd Cong. 1st. Sess. 39–40 (1973) (Statement of Senator Tunney). *See also United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The APPA requires the Court to determine whether the entry of the decree is ''in the public interest.'' 15 U.S.C. 16(e). The Court's role is not to make a *de novo* determination of facts and issues, but ''to determine whether the Department of Justice's explanations were reasonable under the circumstances,'' for ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1577 (D.C.Cir.), *cert. denied*, 114 S.Ct. 487 (1993), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 544 U.S. 1083 (1981). Thus, the ''court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' '' *Bechtel Corp.*, 648 F.2d at 666.

Congress did not intend to require the courts to follow elaborate procedures in making the public interest determination under the APPA. To the contrary, Congress was concerned that unduly protracted proceedings might interfere with the consent decree process. Thus, ''the court is adjured to adopt 'the least complicated and least time-consuming means possible.' '' *United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D.Mass. 1975), (quoting S. Rep. No. 93–298, 93d Cong., 1st Sess. 6 (1973); H. Rep. No. 93–1463, 93d Cong., 2d Sess. 8 (1974)).

The Court's public interest inquiry must be conducted in light of the ''violations set forth in the complaint.'' 15 U.S.C. 16(e)(2). The enforcement agency's decision about what charges to bring in its complaint is a matter generally ''committed to the agency's absolute discretion.'' *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985).

II. Public Comments

A. Comment of St. Thomas Foods

St. Thomas Foods, a Virgin Island wholesaler of beer, wine, distilled spirits, and other products, commented that the proposed Final Judgment should be rejected because it does not address the wine and beer markets, in which St. Thomas Foods alleges that Topa also has a monopoly, and because it does not require Topa to abandon all rights to distribute certain brands of distilled spirits. The proposed Final Judgment should not be amended in response to this comment.

The Complaint alleges that Topa maintained, through an anticompetitive series of contracts, a monopoly in the wholesale distribution of distilled spirits in the Virgin Islands, but it does not allege maintenance of a monopoly in the wholesale distribution of beer or wine. The United States fully reviewed all of Topa's distribution businesses and determined to challenge only conduct relating to its distribution of distilled spirits. The determination of what conduct to challenge and the scope of any complaint is a matter solely within the discretion of the United States. Thus St. Thomas Foods' initial comment falls outside the scope of Tunney Act review.

St. Thomas also questions the relief the United States has negotiated with Topa relating to the wholesale market for distilled spirits. This *is* a matter properly before this Court under the Tunney Act. As noted in the CIS filed with the Complaint and proposed Final Judgment, the United States considered whether to pursue litigation in order to win structural relief terminating some of Topa's exclusive distribution arrangements with suppliers of distilled spirits. The United States concluded that this alternative would place an unacceptably large burden on some suppliers, which are among the victims of Topa's conduct. The competitive problem in this case arises from the fact that Topa has had exclusive distribution agreements with *all* major suppliers of distilled spirits. If some suppliers shift to other distributors, exclusive contracts between Topa and remaining suppliers would not be anticompetitive; competition among brands would mitigate the lack of intra-brand competition in brands sold exclusively through a single wholesaler. The Untied States did not have a basis for determining which suppliers should be shifted to other distributors, nor for urging a court to single out certain suppliers for such treatment. Thus the United States concluded that the better course would be to permit each supplier to determine, for itself, whether to

continue to deal through Topa exclusively. The relief imposed by the proposed Final Judgment presents an effective means to invigorate competition in the wholesale distribution of distilled spirits in the Virgin Islands without establishing unnecessary regulatory constraints that would interfere with free market forces.

B. Comment of A.H. Riise

A.H. Riise owns four retail liquor stores in the Virgin Islands and probably is the largest retailer of distilled spirits in the territory. The defendant, Topa, is A.H. Riise's principal source for distilled spirits. A.H. Riise objected that the proposed remedies do not bar Topa from interfering with suppliers that want to sell directly to retailers. Thus, A.H. Riise urges adoption of a provision prohibiting Topa from communicating with any supplier for the purpose, or with the effect, of urging, compelling, or coercing the supplier to refrain from bypassing the wholesale level of distribution altogether and selling directly to a retailer. This suggested provision would allow suppliers to violate their exclusive distribution arrangements with Topa in order to sell directly to retailers. In addition, A.H. Riise suggests that price regulation be imposed, forcing Topa to offer lower prices to A.H. Riise and thus enabling A.H. Riise to compete more effectively in the tourist duty-free market. Finally, A.H. Riise wants to extend the term of the Final Judgment form five years to ten.

A.H. Riise may be the only retailer large enough to attract direct sales from even a small supplier. Conceivably, a supplier might want to deal directly with A.H. Riise while distributing through a wholesaler to other retailers. Nothing in the proposed Final Judgment impedes this type of arrangement, and the provisions A.H. Riise proposes are not needed to achieve the full relief in this action of enabling distillers to break free of their exclusive agreements with Topa.

There is no reason to provide for special relief for the duty-free market. The interbrand competition that will result from the relief in this case will benefit the duty-free market as well as the retail market for Virgin Islands consumers.

A.H. Riise has also urged that the term of the proposed Final Judgment be changed to ten years. The five-year duration of the proposed Final Judgment is adequate to accomplish its objective. The time needed for a supplier of distilled spirits to switch wholesalers is limited, probably no more than thirty to sixty days. All that is necessary to accomplish the switch is the transfer of existing inventory from one warehouse to another. In wholesaling as opposed to manufacturing, start-up times are short. In wholesaling, there is no need to build a factory, assemble complicated machinery, or arrange for supplies of raw materials; basically, all that is needed is a warehouse and a truck. Thus, even a new-entrant wholesaler could have its business up and running quickly. Sufficient capital to finance inventory is necessary, of course. But the necessary level of capital, while not trivial, is far from prohibitive. Also, the proposed Final Judgment provides that Topa must furnish a copy of the Judgment to each supplier, so its term will be well-known in the industry within days of its entry by the Court. For these reasons, the term of the proposed Final Judgment need be no longer than five years.

The United States also notes statements, cited by A.H. Riise and attributed to the defendant and its counsel in this action, stating that the decree is ineffective. This talk is more wishful than accurate: The decree is carefully designed to ensure full and effective relief. Moreover, the United States assures the Court, the people of the Virgin Islands, and the defendant that we will vigorously enforce this decree and monitor its success. Should competitive problems in the distribution of alcoholic beverages in the Virgin Islands recur, the United States stands ready to address them.

The proposed Final Judgment will make it attractive for certain suppliers to find new wholesalers that will more vigorously promote their products in the Virgin Islands, thereby correcting the competitive harms resulting from Topa's past conduct and increasing competition in the local wholesale distilled spirits market. Therefore, the proposed Final Judgment should be entered as proposed by the parties.

Conclusion

For the reasons set forth above, entry of the decree as submitted by the parties to the Court is in the public interest. St. Thomas Foods' comment, A.H. Riise's comment, and this response will be published in the **Federal Register.**

Dated: May 5, 1995.

Respectfully submitted,

Anne K. Bingaman,

Assistant Attorney General.

John T. Orr,

Justin M. Nicholson,

James L. Weis,

Attorneys, Antitrust Division, Department of Justice, Richard B. Russell Building, Suite 1176, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–7100.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing UNITED STATES' RESPONSE TO PUBLIC COMMENTS to be served upon Ernest Gellhorn, 2907 Normanstone Lane NW., Suite 100, Washington, DC 20008–2725, by first class mail, postage prepaid.

Dated: May 5, 1995.

Justin M. Nicholson,

Antitrust Division, U.S. Department of Justice, Richard B. Russell Building, Suite 1176, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–7100.

January 19, 1995

Mr. John T. Orr,
Chief, Atlanta Field Office,
Antitrust Division, Dept. of Justice,
Richard B. Russell Federal Building,
75 Spring Street, SW.,—Suite 1176,
Atlanta, Georgia 30303.

Re: U.S. v. Topa Equities (V.I.), Civil No. 1994–179

Dear Mr. Orr: I have read with great interest the Complaint, Stipulation and proposed Final Judgment in the above referenced case, which was provided to me by Mr. James L. Weis of your office. This letter is being written to give you my comments on the proposed Final Judgment.

To say the least I am simply amazed at the conclusion of this case. Justice has accomplished absolutely nothing after many years of investigation and I am sure the expenditure of several hundreds of thousands of dollars.

The Topa Equities (V.I.), Ltd., monopoly remains intact. There is no provision in the proposed Final Judgment for any kind of divestiture of liquor brands where Topa has an exclusive agency arrangement. Therefore Topa remains is full control of 90% plus of all the liquor imported and sold in the Virgin Islands. This leaves Topa with the same monopoly position they enjoyed prior to the extensive investigation of the Dept. of Justice. The fact that the Final Judgment precludes Topa from interfering with a supplier moving liquor brands from Topa to another agent is simply a joke. Topa being fully aware of their mononuclear position in the liquor market never would have sued or interfered with a supplier moving brands because they are fearful of their monopolistic practices becoming public in open court.

Another observation I have on the proposed Final Judgment is that it does not address the Wine and Beer business in the Virgin Islands. I am sure that your investigation revealed that Topa also controls and monopolizes the Wine and Beer

importing/distributing business in the Virgin Islands. Topa has the exclusive agency rights for all the major brands of United States beers, Anheuser Busch, Coors and Miller Brewing. Topa also represents many of the major brands of imported beers, Becks, Corona, Carlsberg, Caribe, Guiness, Tennants, and Red Stripe. This then gives Topa 85% market share of all beers of U.S. manufacturer and 70% market share of all imported beers. Yet your Final Judgment makes no mention of the beer business in the Virgin Islands.

The same is true of the Wine importing/distribution business in the Virgin Islands. Topa owned companies have control of over 80% of this business and again the Final Judgment makes no provisions to address this monopoly.

In my opinion the proposed Final Judgment should not be accepted by the District Court of the Virgin Islands. The Judgment should be sent back to the Dept. of Justice and the investigation reopened to address the oversights that I have made above. Topa should be forced to divest itself of brands it controls to once and for all end the monopoly it has enjoyed for all these years. These brands should not only be liquor agencies but should include beer as well as wine. Further Topa should be assessed money damages to at least cover the costs of the investigation and whatever fines the Court deems appropriate.

All in all I am very dissatisfied with the results of your investigation and the proposed Final Judgment. I feel that your investigation was a waste of your time, my time and great deal of tax payer money.

Sincerely.

St. THOMAS FOOD PRODUCT CORP.

Bruce Kimelman.

President

BK/lf

cc. District Court of the Virgin Islands, Division of St. Thomas-St. John

February 24, 1995

John T. Orr, Chief, Atlanta Field Office, Antitrust Division, U.S. Department of Justice, Richard B. Russell Federal Building, Suite 1176, 75 Spring Street, Atlanta, GA 30303

Re: United States of America v. Topa Equities (V.I.), Ltd., D.V.I. Civil No. 1994–179

Dear Chief Orr: In response to the Notice published in the **Federal Register** on December 30, 1994 (59 FR 67728), I am submitting herewith, on behalf of my client IPV, Inc. trading as A.H. Riise Liquor Stores, the enclosed ''Comments of A.H. Riise Liquor Stores on Proposed Final Judgment'' in the above case.

Very truly yours,

Samuel H. Seymour.

SHS/ced

Enclosures

cc: Justin M. Nicholson, Esq., James L. Weis, Esq.

Comments of A.H. Riise Liquor Stores on Proposed Final Judgment

Moore & Bruce

Samuel H. Seymour, Jonathon R. Moore, 1627 Eye Street, NW., Suite 880, Washington, DC 20006, Tel: (202) 775–5980, Counsel for IPV, Inc., trading as A.H. RIISE LIQUOR SHOPS

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Comments of A.H. Riise Liquor Stores on Proposed Final Judgment

IPV, Inc., trading as A.H. Riise Liquor Stores, P.O. Box 6280, St. Thomas, U.S. Virgin Islands 00804–6280 (''A.H. Riise''), through its attorneys, hereby responds to the **Federal Register** notice soliciting public comments on the Proposed Final Judgment and Competitive Impact Statement (''CIS'') in the above-captioned case, 59 FR 67728 (Dec. 30, 1994). A.H. Riise respectfully submits that adoption of the Final Judgment in the form proposed is not in the public interest, because the remedies proposed provide no tangible or immediate prospect for achieving the goals set forth in the CIS: The restoration of competition in the wholesale market for distilled spirits in the Virgin Islands.

I. The Defendant's Own Comments Demonstrate That the Proposed Final Judgment Is Not in the Public Interest

As a threshold matter, before we describe A.H. Riise or analyze the Proposed Final Judgment, it is incumbent upon us to bring to the attention of the Court and the Department the contemptuous manner in which the Defendant holds the Proposed Final Judgment. A Press Release issued by Defendant Topa upon the announcement of the settlement with the Department states:

> According to Ernest Gellhorn, an antitrust lawyer from Washington, D.C. retained by Topa, ''the proposed remedy is all bark and no bite.'' Pointing to the decree's ''meaningless provisions that would modify contract terms written by suppliers or would make supposed scarce warehouse space available to new entrants,'' Gellhorn called ''this *probably the weakest consent decree ever negotiated by the Department of Justice*.'' (Emphasis added.)

A copy of Defendant's Press release is attached hereto as Exhibit 1.

Significantly, the Defendant distributed this Press Release to its suppliers two days *before* the Department filed the Complaint and the Proposed Final Judgment with the Court. The message is clear: Nothing will change.

The Court—and the Department—should scrutinize the motives and substance behind Defendant's Press Release. It is a red flare. It sends a vivid warning: something is seriously wrong with the Proposed Final Judgment. The Press Release belies any assertion in the CIS that the Proposed Final Judgment is in the public interest.

Under the circumstances, the only proper course is for the Department to withdraw its consent to the Proposed Final Judgment. Should it fail to do so, the Court should not rubber stamp the apparent oversights or miscalculations that have brought this case to the brink of approval, lest it, too, be the subject of Defendant's derision.

II. A.H. Riise is an Interested Party

A.H. Riise owns and operates four retail stores for distilled spirits [1] in St. Thomas, Virgin Islands. It is among the class of retailers of distilled spirits in the Virgin Islands which has ''been deprived of the benefits of free and open competition'' by Defendant's actions. Complaint, ¶ 19(c). A.H. Riise is a family-owned business, whose current owners are the third and fourth generations of the family to be involved

[1] Unless otherwise noted, the defined terms from Section III of the Complaint are utilized in these comments.

in the ownership and management of retail liquor businesses in the Virgin Islands.

Defendant Topa is A.H. Riise's major source of supply of distilled spirits. Based upon the description of Defendant's business in Paragraph 3 of the Complaint, A.H. Riise purchases represent at least 20% of Defendant's sales in the Virgin Islands. As such, A.H. Riise is a significant participant in the market which is the subject of the Complaint in this action.

A.H. Riise is also a major factor in the tourist market for distilled spirits in the Virgin Islands. Although conspicuously omitted from the Complaint, the Proposed Final Judgment and the CIS, the tourist submarket for duty-free distilled spirits in the Virgin Islands may represent as much as 60% of the relevant market. On information and belief, A.H. Riise's sales constitute more than half of the sales of distilled spirits to this submarket. A.H. Riise is among the class of retailers most adversely effected by Defendant's monopolistic pricing practices and anti-competitive efforts to dissuade suppliers from selling directly to retailers.

III. The Court Has the Authority To Reject the Proposed Final Judgment if Competition Will Not Be Restored

The Antitrust Procedures and Penalties Act (the ''Tunney Act'') provides in pertinent part that ''before entering any consent judgment proposed by the United States * * *, the court shall determine that entry of such judgment is in the public interest.'' 15 U.S.C. 16(e). The power of the courts in connection with determining the public interest and the legal standard of review to be applied is comprehensively set forth in *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 147–153 (D.D.C. 1982), *aff'd sub nom Maryland* v. *United States*, 460 U.S. 1001 (1983).

In reviewing the purposes of the Tunney Act, the *AT&T* Court referred to the legislative history, which asserted that previously ''consent decrees often fail(ed) to provide appropriate relief, either because of miscalculations by the Justice Department or because of the 'great influence and economic power' wielded by antitrust violators.'' *Id* at 148. In support, the Court cited Senator Tunney: ''Regardless of the ability and negotiating skill of the Government's attorneys, they are neither omniscient nor infallible.'' *Id* at 148, note 70, citing 119 Cong. Rec. 3452 (1973). In response, the public comment procedure was added to the antitrust laws, along with judicial review based on the public interest standard. The express purpose of such review is to ''eliminate judicial rubber-stamping'' of proposed consent orders submitted to courts by the Department. *Id* at 149.

Senator Tunney's comments are particularly appropriate in this case. As discussed below, it is apparent that the Complaint, the Proposed Final Judgment and the CIS overlook highly relevant and significant facts relating to the Defendant's anti-competitive practices. The legislative history makes it clear that the Court here, as the Court did in the recent decision in the *United States* v. *Microsoft Corporation*, C.A. No. 94–1564 (Memorandum Order dated Feb. 14, 1995), can and should look beyond the four corners of the complaint in determining whether the public interest is being served by the Proposed Final Judgment.

In examining the legal standard to be applied in determining the public interest, the *AT&T* Court stated that antitrust ''decisions granting relief after a finding of liability form the most relevant yardstick for determining whether the proposed consent decree will further antitrust policies.'' After noting that the purpose of antitrust remedies is to restore competition and end monopoly power, the Court stated that proposed decrees ''must leave the Defendant without the ability to resume the action which constituted the antitrust violation in the first place. For these reasons, the decree should not be limited to past violations; it must also effectively foreclose the possibility that antitrust violations will occur or reoccur.'' *Id* at 150. As discussed below, the Proposed Final Judgment is particularly deficient in addressing restoration of competition in the future. When evaluated under the standards articulated by the *AT&T* Court, the Proposed Final Judgment will be found to be inconsistent with the public interest.

The *AT&T* Court premised its analysis upon the fundamental purpose of the Tunney Act to ''fully promote the goals of the antitrust laws and further public confidence in their fair enforcement.'' The Court noted that the consent order procedure prior to the enactment of the Tunney Act was essentially secret, and thereby ''undermin(ed) confidence in the legal system.'' It is submitted that the Defendant's arrogant and disparaging characterizations of the Proposed Final Judgment should be the catalyst that brings these fundamental concerns into sharp focus in the Court's determination of the public interest.

IV. The Proposed Final Judgment Is Not in the Public Interest

A. The Proposed Final Judgment Is Premised on a Complaint That Overlooks Material Factors in the Relevant Markets

Both the Complaint and the Proposed Final Judgment are based on an incorrect view of the market for distilled spirits in the Virgin Islands. The Department apparently has misunderstood or overlooked important facts concerning the channels of distribution in the Virgin Islands market, the important of the submarket for distilled spirits sold to tourists, and, most importantly, the Defendant's monopolistic pricing practices. Accordingly, the Complaint and Proposed Final Judgment overlook the only way in which existing market forces can be used to restore competition: By permitting suppliers and retailers to deal directly with each other without interference from the Defendant.

1. The Proposed Final Judgment Defines Away the Most Immediate Prospect for Restoring Competition

Deficiencies in the Proposed Final Judgment's analysis are first evident in the definitional provisions in the Complaint and the Proposed Final Judgment. The term ''retailer'' is defined in Paragraph 7 of the Complaint and Paragraph IID of the Proposed Final Judgment to mean ''any person engaged in the business of purchasing distilled spirits *from wholesalers* as defined herein, and reselling them to consumers in establishments located in the Virgin Islands * * * (Emphasis added.) Significantly, however, some retailers, including A.H. Riise, purchase directly from suppliers, and would do so to a greater extent if it were not for the Defendant's active interference. Yet the possibility that retailers can purchase from suppliers is not even recognized by this definition. Accordingly, the one present and tangible means by which Defendant's monopoly power can be reduced under existing competitive conditions is obviated definitionally.

The definition of ''supplier'' in Paragraph 8 of the Complaint and Paragraph IIE of the Proposed Final Judgment is similarly deficient. This definition provides that supplier means ''any licensed manufacturer, distiller, or importer of distilled spirits from which *Defendant or any other licensed wholesaler*, as defined herein, purchases or has purchased distilled spirits.'' (Emphasis added.) Again, the Complaint and the Proposed Final Judgment do not even recognize that suppliers do sell

directly to retailers and would do so to a greater extent if Defendant's interference were eliminated. Although Virgin Islands law does not permit vertical integration of retailers and wholesalers, Complaint ¶ 10 and ¶ CIS II, there is no prohibition against retailers dealing directly with suppliers.

In fact, Defendant's monopoly power has enabled it to prevent most retailers from obtaining distilled spirits directly from suppliers. This interference occurs particularly where Defendant has exclusive arrangements with suppliers, and even where it does not. The Proposed Final Judgment, as drafted, could be understood by the Defendant to sanction its activities in this regard, which could well intensify as a result. Failure to recognize that retailers can purchase directly from suppliers, and that such arrangements require protection from Defendant's monopoly power, are glaring deficiencies in the Complaint.

2. The Complaint, Proposed Final Judgment and CIS Overlook the Significance of the Tourist Submarket to the Public Interest

The Complaint, the Proposed Final Judgment and the CIS also conspicuously omit any mention of the tourist market for distilled spirits. Tourism is a significant part of the Virgin Islands economy. The duty-free rules, which allow visitors from the United States mainland to enter up to five bottles per person duty-free into the United States from the Virgin Islands,[2] are important enhancements for tourism in the Virgin Islands and, indeed, are a substantial feature of the competitive landscape of the market defined by the Complaint. Tourists, however, will only purchase distilled spirits ''duty-free'' in the Virgin Islands if they are priced competitively with products that they can purchase on cruise ships and at other Caribbean destinations, and, of course, in the continental United States.

Defendant's monopolistic pricing practices have had a material adverse impact on commerce in distilled spirits in the Virgin Islands in the tourist market, but no one would ever know this from the Complaint, the Proposed Final Judgment and the CIS.[3] Without any competition at the wholesale level, Defendant Topa is able to take far larger wholesale mark-ups than are customary. Retailers like A.H. Riise have had no alternative other than to accept Defendant's monopolistic pricing, except in instances where they have been able to by-pass Topa and purchase directly from suppliers. Even after cutting their margins to the bone, retailers often cannot compete with prices of distilled spirits on cruise ships, other Caribbean Islands and, even sometimes on the U.S. mainland, since monopolistic margins are exacted by Defendant at the wholesale level. Thus, A.H. Riise's sales—and those of other retailers—are far lower than they otherwise would be. Accordingly, tourists buy less in the Virgin Islands, and the Virgin Islands economy loses substantial excise and gross receipts tax revenues, as well as lost employment opportunities for retailers and others who serve the tourists trade.

3. It is Contrary to the Public Interest To Permit Defendant's Monopolistic Pricing to Continue

Since the Complaint does not allege anti-competitive pricing practices on the part of Defendant, it is hardly surprising that such practices are not remedied in the Proposed Final Judgment. It is remarkable that after citing injury to suppliers and retailers, Complaint ¶ 19 (c) and (d), CIS ¶ IIB, there is no mention of injury to consumers. Yet there is no single factor that has a greater bearing on the Court's determination of the public interest in this case than Defendant's pricing practices. Defendant's monopolistic pricing damages consumers—both Virgin Islands residents and tourists—to the detriment of the Virgin Islands economy.

On those occasions when suppliers have been willing to sell directly to A.H. Riise, often over interference from the Defendant, A.H. Riise has been able to substantially reduce prices offered to tourists so that they are more competitive with prices offered by cruise ship stores, on other Caribbean islands and in the U.S. As a result, sales increased dramatically, as did profits. Further, A.H. Riise was able to spend considerably more on advertising and promotion to encourage cruise ship passengers to purchase distilled spirits in the Virgin Islands, rather than at foreign ports.

These results were demonstrated again recently when A.H. Riise was finally able to conclude arrangements to purchase directly from a supplier, which had previously sold only through Defendant Topa. Without excessive wholesale margins, A.H. Riise was able to lower the per unit price by $5.00, which increased the gap between its prices and U.S. mainland prices from $1–$2 to $6–$7 per unit. In only a two week period, sales increased 500% and profits increased 100%. Corresponding increases were realized in revenues paid to the Virgin Islands taxing authority.

Conversely, when the prices it receives from Defendant Topa compel retail pricing that a higher, the same or only slightly lower than competing sources available to tourists, sales decline, profits are non-existent, and resources available for promotion are marginal. In A.H. Riise's experience, tourists are generally well-educated on the subject of distilled spirits prices. Accordingly, when they can purchase distilled spirits at substantial savings, they are inclined to make most of their duty-free purchases from retailers in the Virgin Islands. Moreover, once tourists see that duty-free prices for distilled spirits are lower, they tend to purchase greater amounts of other duty-free merchandise in the Virgin Islands as well. Thus, it is not difficult to see how monopolistic pricing at the wholesale level has an immediate negative and depressing impact on sales, profits and promotional activities, with a corresponding impact on employment, tax revenues and the Virgin Islands economy.

In its review of the proposed consent order in *United States* v. *Microsoft, supra,* the Court recognized that the failure of the Department to address significant anti-competitive practices by the defendant was grounds for a determination that the proposed order was not in the public interest. Notwithstanding the vehement objections of the defendant and the Department in that case, the Court refused to accept an order that was limited to operating systems software for X86 microprocessors. There, as here, the proposed Complaint and relief are too narrow, and for that reason must be found not to be in the public interest.

B. The Remedies in the Proposed Final Judgment Do Not Adequately Address the Competitive Harm Identified

The Complaint and the CIS correctly point out that the Defendant has virtual monopoly in the wholesale distilled spirits market in the Virgin Islands. Complaint ¶ 17; CIS ¶ II B. Certain effects of this monopoly are then identified: (1) Retailers are deprived of alternative sources for competing products; and (2) suppliers are deprived

[2] Persons returning to the United States mainland from the Virgin Islands are exempted from duty on four liters (the equivalent of five fifths) of distilled spirits, plus an additional liter of any such product produced in the Virgin Islands. Heading 9804.00.70, Harmonized Tariff Schedule of the United States (1995).

[3] The impact of Defendant's monopolistic practices is far more significant in the tourist market for distilled spirits than in the local market. This is because residents of the Virgin Islands have no choice but to purchase locally, whereas tourists can buy distilled spirits on board cruise ships, on other Caribbean Islands or on the U.S. mainland.

of the benefits of free and open competition, in part because Defendant Topa has inherent conflicts of interest in the representation of competing products and cannot represent all competing brands equally. Complaint, ¶ 19 (c) and (d); CIS ¶ II B. The CIS then states that the purpose of the Proposed Final Judgment is to remedy these effects. But not only are the Complaint and Proposed Final Judgment drafted too narrowly, the remedies proposed are also ineffective.

Rather than ordering a breakup of the Defendant, divestiture of the acquisitions by which it obtained its monopoly, Complaint ¶ 17, or unilateral termination of its distribution agreements, CIS ¶ VI, the Proposed Final Judgment merely attempts to establish new ground rules for the distilled spirits wholesale market in the Virgin Islands that purport to make it more likely for new entrants to dilute the Defendant's monopoly power and thereby restore a competitive environment. There are two main features of the Proposed Final Judgment: (1) Permitting suppliers to break exclusive contracts with Defendant, but only to deal with another wholesaler; and (2) enjoining Defendant from enforcing its rights under Title 12A, Sections 131 and 132, of the Virgin Islands Code for ''wrongful termination.'' Once new entrants appear, the Defendant would be enjoined from (1) interfering with any of the potential new entrants' employees and (2) from acquiring any stock or interest in such new entrants.[4] Proposed Final Judgment ¶¶ IV (b), (c), (f) and (g).

In a moment of candor, the Defendant characterized the foregoing as ''meaningless provisions'' that are ''all bark and no bite.'' Press Release, Exhibit 1. A.H. Riise agrees.

Rather than providing a mechanism for existing market forces to restore competitiveness, the proposed remedies depend on new entrants coming into the wholesale distilled spirits business in the Virgin Islands. The relief proposed, therefore, is merely hopeful. At best, it poses a theoretical framework for competition to develop in the future. Whether the proposed remedies will in fact have any immediate and tangible effect on the competitive environment in the Virgin Islands must depend totally on extrinsic factors, the existence of which are unknown or speculative.

How likely is it that ''new players'' will arrive to compete on the new theoretical ''level playing field'' constructed by the Proposed Final Judgment? Not likely at all.[5] To become viable, potential entrants will need very substantial capital for inventory and warehouse facilities, employees who know the business, and the ability to attract suppliers' business. Each of these factors is far more significant to entering the market than the elements of the proposed remedies. In determining whether the remedies in the Proposed Final Judgment have a reasonable chance of achieving their stated goals, the Court should not overlook the fact that every potential entrant that has tried to come into this market in the last decade has failed. CIS ¶ 2. At the present time, A.H. Riise knows of no company or individual with the necessary capital, personnel and know-how that could enter the Virgin Islands wholesale market for distilled spirits. Further, based on discussions with wholesalers outside the Virgin Islands, little incentive to enter the Virgin Islands market is perceived.

The lack of confidence that the proposed remedies will achieve their stated goals is seen in the CIS. For example, the CIS states: ''qualified personnel, with the necessary connections with the retail trade, are difficult to find in the Virgin Islands. Paragraphs IV(b) and IV(c) *may* help an entrant to hire and retain qualified personnel to run a distilled spirits business in the Virgin Islands without undue interference from Topa.'' (Emphasis added.) CIS ¶ III. They also may not. Indeed, potential entrants will need substantial capital to succeed much more than Topa's noninterference with their employees.

Moreover, as a practical matter, once suppliers are freed from exclusive arrangements with the Defendant, it does not necessarily follow that suppliers will switch to new entrants. Indeed, without a strong track record, why should a major supplier of distilled spirits trust a new entrant to develop its market in the Virgin Islands? The CIS recognizes this problem: ''Any *disatisfied* supplier will be free to find an alternative distributor *if the supplier chooses to do so* * *''* (Emphasis added.) CIS ¶ III. The CIS candidly admits that suppliers will have to be dissatisfied with Topa before they would switch to new, unknown wholesalers.

Because any decision to switch must lie with the suppliers, there can be no guarantee that the model in the Proposed Final Judgment will restore competition.

In fact, the ingredients needed to restore this market to a competitive one are already in place, but have been overlooked in the Proposed Final Judgment. Existing retailers already know the products, the suppliers, and the markets. It is the retailers, in their pricing and promotion, that make markets for each brand. But for the on-going interference by the Defendant, retailers would be in the position *now* to restore competition to the distilled spirits market in the Virgin Islands by dealing directly with suppliers. It is therefore contrary to the public interest to rely solely upon speculative, future, unknown, external factors to enter the wholesale market, as posited by the Proposed Final Judgment. Instead, suppliers' and retailers' rights to deal with each other need to be recognized—and protected.

V. At a Minimum, Any Final Judgment Should Expressly Recognize and Protect Retailers' Rights To Deal Directly With Suppliers, Without Interference From Defendant

Even though the Proposed Final Judgment is deficient in its theoretical approach to restoration of competition, A.H. Riise does not believe that divestiture or the termination of exclusivity arrangements with suppliers are the only remedies that can help erode Defendant's monopoly. With slight modifications, the Proposed Final Judgment can be rectified to achieve the stated goal of providing retailers with alternative sources and freeing suppliers from a single wholesaler that also represents their competitors. That remedy is to recognize—and protect—suppliers and retailers' rights to deal directly with one another without interference from the Defendant. We have attached as Exhibit 2 a ''red-lined'' copy of the Proposed Final Judgment on which we have made recommended revisions that, with minor modifications, would permit the Proposed Final Judgment to achieve the competitive goals set forth in the CIS.

The following language, which could be added after Paragraph IV A of the Proposed Final Judgment, would implement this approach: (Topa is enjoined and restrained from:)

Communicating with any supplier, wholesaler or other person for the purpose or with the effect of urging, compelling, or coercing any supplier or wholesaler to refrain from selling distilled spirits to any retailer in the Virgin Islands. Nothing in this paragraph

[4] We have deliberately omitted any analysis of the problem of the scarcity of warehouse space, which is given inordinate attention. Complaint at ¶ 16, Proposed Final Judgment ¶ IV E, CIS ¶ II. Defendant's reference to this issue as ''supposed scarce warehouse space'' in its Press Release, Exhibit 1, suggests that this issue is be a straw man.

[5] *See* CIS ¶ VI. The only reason that unilateral termination of Defendant's exclusive arrangements with suppliers might ''place an unacceptably large burden'' on them is if no other wholesaler entered the market, notwithstanding the proposed relief.

of Section IV shall be construed to inhibit Topa from negotiating, entering into and adhering to a contract dealing with a supplier on an exclusive basis; provided, that such designation shall not directly or indirectly prevent any retailer in the Virgin Islands from acquiring distilled spirits directly from any supplier.

The suggested language is derived from the consent order issued in *United States* v. *Maryland State Licensed Beverage Association, Inc.*, CCH Trade Reg. Rep. ¶ 69,261 (D. Md., 1958). In that case, distributors and wholesalers were charged with collusion in attempting to keep retailers from dealing directly with suppliers. The appropriate remedy to enjoin such anti-competitive practices was to recognize retailers' and suppliers' rights to deal directly with each other, while continuing to permit exclusive arrangements between wholesalers and suppliers. The same approach is appropriate here.

In addition, the current Paragraph D of Section IV of the Proposed Final Judgment should be amended as follows:

(Topa is enjoined and restrained from:)

D. Refusing to deal with any retailer because that retailer deals with another wholesaler *or directly with a supplier.*'' (Suggested revision emphasized.)

In commenting on Paragraph IVD of the Proposed Final Judgment, the CIS points out: ''Even if Topa loses some brands to a new or existing wholesaler, Topa will retain enormous influence over retailers. This provision (as drafted) will prevent Topa from abusing that position in the retail trade * * *.'' However, unless language is added to Paragraph IVD expressly protecting retailers' and suppliers' rights to deal directly with each other, the Proposed Final Judgment could be read by Defendant Topa to sanction refusals to deal in circumstances where suppliers deal directly with retailers.

It is imperative that the Proposed Final Judgment expressly prohibit Topa's interference with efforts on the part of retailers to deal directly with suppliers. It is this omission that poses the greatest threat to competition in the Virgin Islands. As one of Defendant's attorneys points out in the Press Release, Exhibit 1: ''nor will (the Proposed Final Judgment) change how Topa does business 'because the company is not being asked to anything different from what it has been doing over the past five years.' '' One of the things Topa has been doing over the past five years is interfering with direct supplier-retailer relationships. Unless Topa's behavior changes, competition will not be restored to the wholesale distilled spirits market in the Virgin Islands.

Only by recognizing and protecting suppliers' and retailers' rights to deal directly with each other can the discipline of competition be restored. For example, if A.H. Riise is able to purchase from suppliers, there is nothing to prevent the Defendant or other wholesalers from selling to A.H. Riise if they can provide better price/service/delivery than can be obtained from suppliers directly. Presumably the wholesale prices that Defendant and other wholesalers can obtain for providing wholesaler functions will be lower than the prices retailers will be able to obtain directly. Therefore, there will always be a role for the Defendant to play in the Virgin Islands distilled spirits wholesale market, provided the Defendant prices competitively.

VI. The Five Year Duration for the Proposed Final Judgment Is Patently Inadequate

There is probably no other area that more accurately demonstrates Defendant's characterization that the Proposed Final Judgment is the ''weakest * * * ever negotiated by the Department of Justice'' than the five-year term proposed for the order. Proposed Final Judgment ¶ VIII. Defendant has enjoyed its monopoly power for over a decade. Old habits die hard. Even if A.H. Riise's recommended modifications in the Proposed Final Judgment were to be adopted, such an order should remain in effect for a minimum of ten years to give competitive forces an opportunity to develop and become viable and effective.

Conclusion

The Proposed Final Judgment is not in the public interest, because it is too narrowly drawn and its remedies will not restore competition in the distilled spirits market in the Virgin Islands. The Complaint and the proposed remedies totally overlook Defendant's monopolistic pricing practices. Moreover, the terms of the Proposed Final Judgment which purport to provide fertile soil for potential new entrants to enhance competition, in the words of the Defendant, are ''meaningless provisions.'' Topa Press Release, Exhibit 1.

Price competition will be quickly restored if suppliers are freed to deal directly with retailers. Competitive pricing in this market is in the public interest, because it will boost tourism and tourism-related commerce, thereby enhancing employment and tax revenues in the Virgin Islands. Unfortunately, the Proposed Final Judgment does not promote this goal. It should therefore be rejected.

Conversely, adoption of the Proposed Final Judgment as drafted will permit Defendant's monopoly power to go unchecked. Since, as correctly characterized by Defendant's Press Release, Exhibit 1, Defendant is not required to change its behavior, adoption of the Proposed Final Judgment will legitimize and institutionalize its anti-competitive practices and monopolistic power. A continuation of these practices would be detrimental to suppliers, retailers, the consuming public, and, more generally, the economy of the Virgin Islands, and thus, the public interest. Therefore, the Proposed Final Judgment should be withdrawn and modified as suggested in Exhibit 2.

Respectfully submitted,

Samual H. Seymour

Jonathan R. Moore

Note: Retyped by Department of Justice

TOPA Press Release

Topa Equities (V.I.), Ltd. today announced that it had reached a settlement with the Department of Justice closing down the government's drawn out investigation of acquisitions by Topa of distilled spirits distributors in the early 1980's.

''Topa conceded nothing nor did it acknowledge that these acquisitions had any effect on competition,'' said Maria Hodge, counsel for Topa. ''The case was settled and a proposed consent decree was accepted for one reason—to end the five-year investigation.''

Hodge further stated that ''the decree would have no effect on Topa's business activities'' even though the investigation ''had examined all of its on-going business activities. Apparently they couldn't find anything wrong that could be challenged under the antitrust laws except some acquisitions over a decade ago.''

According to Ernest Gellhorn, an antitrust lawyer from Washington, DC retained by Topa, ''the proposed decree is all bark and no bite.'' Pointing to the decree's ''meaningless provisions that would modify contract terms written by suppliers or that would make supposed scare warehouse space available to new entrants,'' Gellhorn called ''this probably the weakest consent decree ever negotiated by the Department of Justice.''

Gellhorn also said that the reason that the Department of Justice was willing to accept this ''moral defeat'' was that ''after combing through ten years of Topa's records and interviewing scores

of others, the government could not find anything to object to about how Topa conducts its business.''

Topa's decision to settle this matter ''involves no finding or acknowledgment of any wrong-doing,'' attorney Hodge emphasized. Nor will it change how Topa does business ''because the Company is not being asked to do anything different from what it has been doing over the past five years.''

All the government has complained about is that Topa's acquisitions resulted in it being the sole wholesale distributor for major distilled spirits in the U.S. Virgin Islands. ''What the government fails to note,'' according to Ms. Hodge, ''is that Topa has been successful because it has served both its suppliers and its customers so well.'' Nonetheless, ''it has accepted this settlement in order to end what has been a significant drain on the company's resources,'' Hodge said.

Topa owns West Indies Corp. and Bellows International, Ltd. in the U.S. Virgin Islands. ''None of the acquisitions we have made in the Virgin Islands have been sought out by us,'' said Topa Chairman, John Anderson. ''In several cases, we were asked to help a failing company, which in turn allowed many employees to keep their jobs. Our only aim has been to be a good employer and a good corporate citizen in the V.I. community and a solid performer for our many quality brands.'' Topa employees (sic) over 225 employees in the Territory.

For additional information, please call Maria Hodge (809–774–6845).

December _____, 1994

Note: Retyped by Department of Justice. Brackets (''[ ]'') substituted by Department of Justice for redlining in the original.

Final Judgment

Plaintiff, United States of America, filed its Complaint on December 7, 1994. Plaintiff and defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against, or any admission by, any party with respect to any issue of fact or law. Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against defendant under Section 3 of the Sherman Act (15 U.S.C. § 3).

II

As used in this Final Judgment:

A. ''Distilled spirits'' means liquor products of all types intended for human consumption, including, but not limited to, whiskey, gin, vodka, rum, tequila, brandy, liqueurs and cordials, but excluding wine and malt beverages and non-alcoholic beverages.

B. ''Person'' means any individual, association, cooperative, partnership, corporation or other business or legal entity.

C. ''Virgin Islands'' means the Territory of the Virgin Islands of the United States.

D. ''Retailer'' means any person engaged in the business of purchasing distilled spirits from wholesalers [or suppliers], as defined herein, and reselling them to consumers in establishments located in the Virgin Islands, including such Virgin Islands-located establishments as retail liquor stores, grocery stores, convenience stores, restaurants and hotels.

E. ''Supplier'' means any licensed manufacturer, distiller or importer of distilled spirits from which defendant or any other wholesaler [or any retailer], as defined herein, purchases distilled spirits or has purchased distilled spirits within one year prior to this Final Judgment.

F. ''Wholesaler'' means any person holding a wholesaler's license for distilled spirits from the government of the Virgin Islands and who is engaged in the business of purchasing distilled spirits from suppliers and reselling them to other wholesalers or to retailers located in the Virgin Islands.

G. ''Topa Equities (V.I.), Ltd.'' (hereinafter referred to as ''Topa'') means defendant and its parent (but only to the extent of its effective supervision of, or direct involvement in, defendant's wholesale distribution of distilled spirits in the Virgin Islands), wholesaler subsidiaries, wholesaler affiliates, successors and assigns (excluding any independent purchasers), directors, officers, managers, agents and employees and any other person acting for or on behalf of them.

III

The provisions of this Final Judgment shall apply to Topa and to all other persons in active concert or participation with Topa who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Topa is enjoined and restrained from:

A. Taking any action under any contract or under Title 12A, Sections 131 and 132, of the Virgin Islands Code to prevent its suppliers from canceling their distribution arrangements for distilled spirits, whether written or not, with Topa upon thirty days' written notice and appointing another wholesaler in its stead. In the event of such cancellation of distribution arrangements for distilled spirits by a supplier, Topa shall, at the supplier's request, sell back to the supplier, at the prices Topa paid to the supplier to purchase the products, plus storage, handling and transportation costs, as well as all taxes and duties paid by Topa, all distilled spirits that Topa then has in its possession that were purchased by Topa from the supplier and that have not been sold or otherwise committed, and otherwise assist in the orderly disposition of such existing inventory;

[B.] Communicating with any supplier, wholesaler or other person for the purpose or with the effect of urging, compelling, or coercing any supplier or wholesaler to refrain from selling distilled spirits to any retailer in the Virgin Islands. Nothing in this paragraph of Section IV shall be construed to inhibit Topa from negotiating, entering into, and adhering to a contract dealing with a supplier on an exclusive basis; provided, that such designation shall not directly or indirectly prevent any retailer in the Virgin Islands from acquiring distilled spirits directly from any supplier.]

[C.] Entering into with, of enforcing or attempting to enforce against, any officer of Topa, any written contract, agreement or covenant not to compete in the distilled spirits industry in the Virgin Islands; and countering an offer of employment to any officer of Topa from any wholesaler with which a Topa supplier has entered into any arrangement to distribute its distilled spirits in the Virgin Islands. Otherwise, Topa may give its officers raises, bonuses and promotions in the ordinary course of business, counter offers of employment from distributors not engaged in the distribution of distilled spirits and take action against its former officers for the unlawful disclosure of trade secrets;

[D.] Making unsolicited offers of employment to any executive employee

of any wholesaler with which a supplier has entered into any arrangement to distribute its distilled spirits in the Virgin Islands for two years following the opening for business of such wholesaler, unless such employee has previously resigned from or been terminated by such wholesaler;

[E.] Refusing to deal with any retailer because that retailer deals with another wholesaler [or directly with a supplier];

[F.] Intentionally preventing, or attempting to prevent, any wholesaler with which a supplier has entered into any arrangement to distribute its distilled spirits in the Virgin Islands from obtaining warehouse space for the distribution of distilled spirits. Topa may, in the ordinary course of business, seek, retain and acquire warehouse space to meet its ordinary and necessary business requirements;

[G.] Directly or indirectly merging or consolidating with, or acquiring securities of, any other wholesaler without obtaining the prior written consent of the Antitrust Division of the Department of Justice; and

[H.] Acquiring, without obtaining the prior written consent of the Antitrust Division of the Department of Justice, either any quantity in excess of 5% of a wholesaler's assets, excluding inventory, applied to the wholesale distribution of distilled spirits in the Virgin Islands, or any quantity in excess of 30% of a wholesaler's inventory of distilled spirits.

Within thirty days of the entry of this Final Judgment, Topa shall cause to be delivered to all suppliers who have contracts then in existence with Topa, written or otherwise, by certified letter or its equivalent, a copy of this Final Judgment.

V

For the purpose of determining or securing compliance with this Final Judgment and subject to any recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request by the Attorney General or by the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice to defendant made to its principal office in Los Angeles, California, be permitted:

1. Access during the office hours of defendent to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, which may have counsel present, relating to any of the matters contained in the Final Judgment; and

2. Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, any of whom, together with defendant, may have counsel present, regarding any such matters.

B. Upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office in Los Angeles, California, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment, as may be requested.

C. No information obtained by the means provided in this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to be that to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure or as otherwise provided by statute, and the defendant marks each pertinent page of such material, ''Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' or as otherwise provided by statute, then ten days' notice shall be given by the United States to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VI

Topa shall:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, managers and other employees with the terms of the Final Judgment; and

B. File with this Court and serve upon plaintiff, within ninety days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment.

VII

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof.

VIII

This Final Judgment will expire on the [delete ''fifth''] [tenth] anniversary of its date of entry.

IX

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge, District of the Virgin Islands.

[FR Doc. 95–12561 Filed 5–26–95; 8:45 am]
BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–032)]

Intent to Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant ICI Composites Inc., 2055 East Technology Circle, Tempe, AZ 85284; and Imitec, Inc., 990 Maxon road, Schenectady, NY 12308, a partially exclusive license to practice the invention protected by the U.S. Patent Application Numbers 08/209,512 entitled ''PHENYLETHNYL TERMINATED IMIDE OLIGOMERS,'' which was filed on March 3, 1994; and 08/330,773 entitled ''IMIDE OLIGOMERS ENDCAPPED WITH PHENYLETHYNYL PHTHALIC ANHYDRIDES AND POLYMERS THEREFORM,'' which was filed on October 28, 1994, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with the Department of Commerce Licensing Regulations (37 CFR Part 404). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the notice and then